

CITY OF BELLEVUE
CITY COUNCIL

Summary Minutes of Special Meeting

June 1, 2004
6:00 p.m.

Council Conference Room
Bellevue, Washington

PRESENT: Mayor Marshall, Deputy Mayor Noble, and Councilmembers Balducci, Chelminiak, Davidson, Degginger, and Lee¹

ABSENT: None.

1. Executive Session

The meeting was called to order at 6:04 p.m. by Mayor Marshall, who presided. Mrs. Marshall explained that an Executive Session will be held at the end of the evening's agenda to discuss one item of property disposition.

Mayor Marshall announced that Agenda Item 4(e) will be addressed immediately following Agenda Item 3(b) to ensure the most efficient use of staff time.

2. Oral Communications

- (a) Mike O'Herron said he was the regional president for Millennium Digital Media until recently, and he now serves as a consultant. Millennium has approximately 450 subscribers in Bellevue. Mr. O'Herron said the City charges a flat franchise fee of \$10,000. He asked Council to consider a franchise fee of \$5,000 for companies with a smaller customer base. Similarly, he requested lower threshold requirements for performance bonds for franchises with a smaller customer base.
- (b) Kathy Putt, speaking on behalf of Comcast Cable, referred Council to packet materials for Agenda Item 4(d) including a letter regarding Comcast's concerns about proposed Bellevue City Code changes. She noted that Comcast's main competitor is satellite TV service, which is not regulated at the federal or local level. Ms. Putt said any costs associated with requirements imposed by the City will be passed on to customers.

3. City Manager's Report

¹ Mr. Lee left the meeting at 7:00 p.m. immediately following the vote on Ordinance No. 5523.

(a) Letter to RTID Executive Board

City Manager Steve Sarkozy opened discussion regarding Bellevue's priorities for Regional Transportation Investment District (RTID) planning. Diane Carlson, Director of Intergovernmental Relations, requested Council approval of the draft letter to the RTID Executive Board outlining Bellevue's priority for projects benefiting I-405, I-90, and SR 520 [Page 3-2 of the Council packet].

Deputy Mayor Noble commented on the ongoing challenge for a couple of years now to reach regional consensus on transportation projects. He suggested articulating Bellevue's advocacy of the I-90 project but cautioned against asking that the I-90 project be included in the RTID Plan because it could detract from achieving regional consensus on RTID projects.

Dr. Davidson is disappointed that the I-90 project is seen by some as an Eastside, rather than regional, project. Mr. Chelminiak concurred.

Mayor Marshall spoke to Council's ongoing interest in regional projects through RTID funding. She explained that the proposed center lane conversion to high-capacity transit on I-90 could be funded as a Sound Transit Phase 2 project. She clarified that HOV lanes are considered to be under the authority of the Washington State Department of Transportation.

- ☉ Mr. Degginger moved to approve the draft letter to the RTID Executive Board provided in Council's desk packet, which is amended from the original Council packet version to request that the I-90 project be included in the RTID Plan. Mr. Chelminiak seconded the motion.
- Deputy Mayor Noble made a substitute motion to delete the request that the I-90 project be included in the RTID Plan, and Mr. Lee seconded the motion.
- The substitute motion to delete the request that the I-90 project be included in the RTID Plan failed by a vote of 2-5, with Mr. Lee and Mr. Noble in favor.
- ☉ The motion to approve the draft letter to the RTID Executive Board provided in Council's desk packet, as amended to request that the I-90 project be included in the RTID Plan, carried by a vote of 6-1, with Mr. Noble dissenting.

(b) Summer Water Supply Conditions

Mr. Sarkozy asked staff to provide an update on the summer water supply. Brad Miyake, Utilities Director, noted packet materials beginning on page 3-4 of the Council packet. Summer water supply conditions have gone from good to fair due to dry conditions since February as well as higher than average water consumption. Dr. Davidson commented that water shortages are becoming an annual occurrence.

4. Study Session

[Agenda Interruption]

- (e) Resolution No. 7000 authorizing approval of a final settlement of a claim filed against the City of Bellevue for property damage to the Nguyen residence caused by a broken City water main.

Mr. Miyake explained that a water main at an elevation higher than the Nguyen home broke, allowing water into their basement. The claim may be settled in full by payment of \$25,760.91.

➡ Mr. Lee moved to approve Resolution No. 7000, and Mr. Noble seconded the motion.

➡ The motion to approve Resolution No. 7000 carried by a vote of 7-0.

[Agenda Resumed]

- (a) Council Business/New Initiatives

Councilmember Balducci said she and Mayor Marshall recently conducted interviews of Transportation Commission candidates.

➡ Ms. Balducci moved to appoint Lise Northey and Daryl Wendle to the Transportation Commission to serve four-year terms concluding on May 31, 2008. Mr. Noble seconded the motion.

➡ The motion to appoint Lise Northey and Daryl Wendle to the Transportation Commission to serve four-year terms concluding on May 31, 2008, carried by a vote of 7-0.

Mr. Degginger congratulated Issaquah High School's boys baseball team for winning the state championship.

Mr. Lee reminded Councilmembers about the *Voices of Tomorrow* function on Friday, June 4, and the Asian Cultural Festival at Bellevue Square on Saturday, June 5.

Mr. Noble reminded Council about the Eastside Human Services Forum's breakfast on June 8.

Mr. Chelminiak invited the public to the opening of the Bellevue Farmers Market on June 17 in the parking lot of First Presbyterian Church on Bellevue Way.

- (b) Ordinance No. 5523 amending Ordinance No. 5426 to change the Capital Investment Program project name from Public Safety Center (CIP-PS-57) to New City Building (CIP-PS-57); amending the 2003-2009 CIP Plan to increase the appropriation to CIP-PS-57 in the full amount of the bond proceeds set forth in Ordinance No. 5524; authorizing transference of bond proceeds from the New City Building Project Fund to CIP-PS-57; adopting the NCB Comprehensive Finance Plan; and authorizing execution of Part II of the Agreement between the City and Lease Crutcher Lewis, General Contractor/Construction Manager, that

establishes the Guaranteed Contract Cost and authorizes performance of the remaining work on and completion of the New City Building.

Planning and Community Development Director Matt Terry reviewed Council's actions to date to set a project scope and budget for the New City Building redevelopment project. On May 24, Council approved a final project scope and budget of \$101,550,000. Council made four changes to the City Manager's recommended scope and budget as follows:

1. Restored proposed funding of \$450,000 to the CIP Public Art Fund, thereby increasing the New City Building project budget.
2. Restored \$94,000 in CIP gateway funding and voted to utilize the remaining \$206,000 for a gateway treatment at the New City Building.
3. Added landscaping enhancements to the south side of the building.
4. Restored the pavilion water feature to the project scope and budget.

Mr. Terry said Ordinance No. 5523 establishes a scope and budget for the New City Building redevelopment project of \$101,550,621. Section 3 of the ordinance adopts a comprehensive finance plan for the project. The ordinance changes the project name from Public Safety Center to New City Building, amends the 2003-2009 CIP Plan to increase the appropriation to the project, authorizes the City Manager or his designee to proceed with the sale of bonds to finance the project, and authorizes the City Manager or his designee to issue the Notice to Proceed with Construction of the project. Bond issuance costs are itemized on page 4B-3 of the Council packet.

Mr. Terry explained that under the GC/CM (general contractor/construction manager) process, the general contractor will award subcontract bids to the lowest responsible bidders except in instances in which the general contractor, Lease Crutcher Lewis, wishes to perform the work itself. In these cases, the City will coordinate the bid process. Council will be asked to approve a number of contracts in the future in which the City is self-performing. A special Council meeting has been scheduled for June 24 to approve the sale of the bonds. Staff will provide a presentation in July regarding the process for addressing change orders if they arise. Mr. Terry said monthly status reports will be provided to Council and emerging issues will be discussed with Council as staff becomes aware of them.

- ➡ Deputy Mayor Noble moved to adopt Ordinance No. 5523, and Mr. Lee seconded the motion.

Mr. Lee noted he did not agree with all of Council's decisions last week regarding the project scope and budget. However, he feels Ordinance No. 5523 fulfills a longtime vision for a civic center in downtown Bellevue. Mr. Lee commended Council's courage in moving forward with the project. He noted that the final project budget is \$1 million less than the preliminary project budget set by Council.

Mr. Degginger asked to receive copies of the minutes of the project's weekly construction meetings.

Responding to Dr. Davidson, Mr. Terry said the new building will have a drop-off zone at the front door as well as a safe pedestrian zone for entering the building from the parking garage.

- ☛ The motion to adopt Ordinance No. 5523 carried by a vote of 7-0.

Mr. Sarkozy commended Council for addressing long-term facility needs and providing a vision for the building and site.

Dr. Davidson feels this action demonstrates the success of long-term comprehensive planning.

Mayor Marshall thanked Mr. Terry and staff for their hard work on this project.

- (c) Resolution No. 6999 authorizing a three-month extension to the City's professional services agreement with Preston Gates Ellis LLP for bond counsel services. This extension would authorize the completion of the professional services in conjunction with the New City Building Limited Tax General Obligation (LTGO) bonds, as well as finalize the Water & Sewer Revenue Refunding bonds, which are both currently works in progress.
(This item was discussed at the May 24, 2004, Extended Study Session. An RFP will be issued for these bond services for a new contract to be effective in September 2004.)

Finance Director Jan Hawn noted that the professional service agreement with Preston Gates Ellis expired on May 31. Staff requests a three-month extension of the contract under its existing terms.

- ☛ Councilmember Balducci moved to approve Resolution No. 6999, and Mr. Noble seconded the motion.
- ☛ The motion to approve Resolution No. 6999 carried by a vote of 6-0, with Mr. Lee absent.

- (d) Cable TV and Franchise Code Changes

Nora Johnson, Transportation Assistant Director, opened discussion regarding Bellevue City Code changes affecting cable television and other franchise agreements. Comcast Cable's franchise agreement expires in late July. Staff would like to implement the desired code change before that time. The goals of the code changes are to enhance customer service standards and to provide Council with the appropriate tools to govern franchise activities.

David Kerr, Franchise Manager, explained that draft customer service standards were distributed to both Comcast and Millennium Digital Media earlier this year for comment. However, it became apparent that a number of provisions in the cable communications code should be updated as well as additional sections of the code related to franchises. The code updates will also address franchise enforcement and compliance, internal consistency of city codes and policies, regulatory conformity, and the clarification of duties and obligations.

Mr. Kerr said the code updates affect two sections: Chapter 5.30 regarding cable communications and Chapter 14.20 covering franchise terms and conditions. The proposed updates were distributed to both cable providers and their responses are provided in Council's desk packet.

Mr. Kerr explained that the updates propose to increase the franchise fee from \$5,000 to \$10,000 to more accurately reflect the cost of staff time to negotiate franchise negotiations. Seattle charges \$20,000 and Portland's fee is \$10,000. Tacoma is currently considering increasing its fee of \$5,000.

Mayor Marshall noted the request by Millennium Digital Media for a lower franchise fee given their smaller customer base. Mr. Kerr noted the potential that Millennium could sell its franchise or merge with another company that could then significantly expand its operations as an overbuilder (second cable) franchise. He explained that Millennium's smaller customer base does not limit the complexity of renewing a cable franchise.

Mr. Degginger asked staff to develop a two-tiered fee structure for Council consideration. Mr. Chelminiak would like to consider the approach suggested by Millennium. Mayor Marshall asked staff to develop options and an analysis of the tradeoffs for different fee approaches.

Ms. Balducci noted Comcast's position that federal law allows the company to pass on franchise fee costs to its customers. Mr. Kerr will ask the City Attorney's Office to prepare a legal interpretation of this issue.

Responding to Dr. Davidson, Mr. Kerr confirmed that the City is currently involved in a dispute with Comcast regarding what the City considers underreporting and the underpayment of franchise fees.

Mr. Kerr noted Comcast is concerned the definition of "transfer" could apply to the sale of partial assets. Continuing to review the letter from Comcast dated May 27, 2004, from Kathy Putt [provided in Council's desk packet], Mr. Kerr said Comcast is required to provide cable service to all residents if an easement is provided. Sections 5.30.220(D) and 5.30.230 impose interest charges and a sliding scale late fee for late payments or underpayments of franchise fees. Mr. Kerr said reporting requirements are added primarily to support the implementation of customer service standards. Comcast's comments on continuity of service provisions refer to a code section that has not been revised.

Moving to subscriber fees and rates, Mr. Kerr said the intent of this provision is to address the bundling of services. Comcast provides cable, Internet, and local phone services under the authority of its cable franchise. Customers receive discounts for subscribing to multiple services. Mr. Kerr explained that Comcast could offer deep discounts on cable service for those subscribing to Internet and/or phone services and thereby reduce or eliminate the franchise fee applicable to the cable service only. The cable act regulates against rate discrimination, and the bundling of services essentially results in a form of rate discrimination.

Responding to Mr. Degginger, Mr. Kerr said the regulation of service bundling has not been tested in court. However, many franchises have anti-bundling language. Comcast has indicated it will refuse to accept such a provision in a franchise agreement.

Mr. Kerr described a performance evaluation provision that will require Comcast to conduct a customer survey and provide the results to the City.

Mr. Kerr noted the January 16, 2004 [incorrectly dated 2003], letter from Comcast which primarily addresses customer service standards. These standards require automatic credit to customers for any cable outages. They also require Comcast to investigate whether there is an outage in an area based on one customer complaint rather than the current practice of requiring three customers to call within a two-hour period before investigating.

Mr. Kerr said the City decided to pursue customer service standards after a survey indicated that 73 percent of respondents who called Comcast with a problem were on hold for more than 10 minutes. Similarly, 79 percent considered customer service standards a high franchise renewal priority. The standards are designed to focus on concrete and measurable customer service issues.

Revisions to Chapter 14.20 address franchise terms including bond requirements, facility relocation, penalties for late payments, civil penalty provisions, and termination/revocation. This section applies to non-cable franchises as well including Olympic Pipe Line Company and Puget Sound Energy.

Mr. Kerr reviewed the next steps in the process:

- Council action on proposed code changes (BCC 5.30 and 14.20) scheduled for June 7.
- Consideration of proposed Comcast franchise renewal targeted for June 28.
- Council action on Comcast franchise renewal is scheduled for July 6.
- Staff will begin working on the franchise renewal for Millennium Digital Media in October 2004.
- Olympic Pipe Line franchise extension expires in March 2005.

Mr. Degginger expressed concern that the language in BCC Sections 14.20.270 and 14.20.280 regarding termination/revocation requirements is vague and unclear. He noted that Section 14.20.270 provides no criteria for revocation based on safety issues. Mr. Degginger feels the sections need to be rewritten to be more specific about expectations, procedures, and consequences. He noted that safety does not appear to be addressed in the code, particularly in Section 14.20.080 (Consideration of Applications). Mr. Kerr noted that the City is pre-empted by federal regulations and legislation from regulating pipeline safety and operations.

Councilmember Balducci commented on the odd situation of negotiating with a utility that is also regulated by the City. She questioned how customer service standards will be enforced. Mr. Kerr said a City phone number is already provided on cable bills and he does not anticipate a significant increase in complaints. Ms. Johnson said there are no plans to add staff to respond to cable customer complaints.

In further response to Ms. Balducci, Mr. Kerr said the customer service standards are consistent with those in Seattle and the region so they should not contribute to increased costs for consumers.

Mayor Marshall would like a future discussion regarding the non-regulation of satellite TV services. She questioned whether this should be added to Council's federal legislative agenda. Mr. Degginger noted these companies do not use the public right-of-way. Mrs. Marshall asked staff to explore options in reference to Millennium's request that performance bond requirements be scaled according to the size of a company's customer base.

Mayor Marshall thanked staff for their hard work on this complicated issue.

At 8:03 p.m., Mayor Marshall declared recess to Executive Session and announced that the meeting will conclude following that session.

The meeting was adjourned at 9:00 p.m.

Myrna L. Basich
City Clerk

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